HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 395 (S/S) 2004

Smt. Pushpa Pandey ... Petitioner

Vs.

Union of India, through the Secretary,
Ministry of Finance at New Delhi
and two others ... Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 2nd December, 2004.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 395 (S/S) 2004

Smt. Pushpa Pandey W/o late R.C. Pandey,
R/o Akashdeep Colony, Badi Mukhani,
Post Badi Mukhani, Haldwani,
District Nainital. ... Petitioner

Vs.

1. Union of India, through the Secretary,
   Ministry of Finance at New Delhi,
2. Commissioner of Custom, 255 Vivek Khand,
   Gomti Nagar, Lucknow, U.P.
3. Assistant Commissioner, Custom,
   Commissionerate, Lucknow, U.P. ... Respondents

Sri C.K. Sharma, learned counsel for the petitioner.
Ms. Anjali Bhargava, learned counsel for respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri C.K. Sharma, learned counsel for the petitioner and Ms. Anjali Bhargava, learned counsel for Union of India.

By means of this writ petition, the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 23.01.2004 passed by the Assistant Commissioner, Custom Commissionerate, Lucknow U.P. by which the Assistant Commissioner, Custom has asked the petitioner to submit succession certificate for finalizing the pension papers of petitioner's husband.

Contention of the petitioner is that petitioner's husband was appointed on 23.06.1976 as Sepoy in the Department of Customs. At the time of his induction in the service, he was unmarried. The petitioner who claims to be the wife of Sri R.C. Pandey, a Sepoy in the Custom Department, lodged a first information report on 16.11.2001 at police station Gomti Nagar, Lucknow stating therein that she had received message on 06.11.2001 from her husband that he is proceeding for

Haldwani. However, he did not reach Haldwani till 16.11.2001. On inquiry from the office at Lucknow, it was revealed that petitioner's husband has already left Lucknow on 07.11.2001.

After investigating the matter, a final report was submitted on 29.01.2003 by the Investigating Officer. As the husband of the petitioner was not traceable, the Special Chief Judicial Magistrate, Custom, Lucknow accepted the final report vide its order dated 06.09.2003 which is annexed as annexure-4 to the writ petition.

The petitioner has two sons and one daughter.

The Central Civil Services (Pension) Rules 1972, Sub Rule 54 (11) provides for payment of retirement gratuity and family pension to the family, in case an official's whereabouts are not known. The Rule is quoted hereunder:-

"(11) Payment of retirement gratuity and family pension to the family, in case an official's whereabouts are not known.

1- A number of cases are referred to this Department for grant of family pension to the eligible family members of employees who have suddenly disappeared and whose whereabouts are not known. At present all such cases are considered on merits in this department. In the normal course unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

2. The matter has been under consideration of the Government of sometimes as withholdings of the benefits due to the family has been causing great deal of hardship. The President is not pleased to decide that (i) when an employee disappears leaving his family, the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee, (ii) after the elapse of a period of one year, other benefits like retirement or death gratuity/family pension may also be granted to the family subject to the fulfillment of conditions prescribed in the succeeding paragraphs.

3. The above benefits may be sanctioned by the Administratives Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made by the police.

(ii) An Indemnity Bond should be taken from the nominee/defendants of the employee that all payments will be adjusted against the payments due to the employee in case he appears on the scene and makes any claim."

Under Rule 54 Sub Rule (11) (2) it is provided that (i) when an employee disappears leaving his family, the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee, (ii) after the elapse of a period of one year, other benefits like retirement or death gratuity/family pension made also be granted to the family subject to the fulfillment of conditions prescribed under Rule 54 Sub Rule 11(3).

The conditions are firstly; that the family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts secondly; that an indemnity bond should be taken from the nominee/ defendants of the employee that all payments will be adjusted against the payments due to the employee in case he appears on the scene and makes any claim.

In the present case, the contention of the petitioner is that she lodged first information report and there is a report of Special C.J.M., Custom, Lucknow on the record that the employee is not traceable and even after this report, the petitioner has not been paid the pensionary benefits, avoiding the directions provided under the aforesaid Rules.

The respondents have filed counter affidavit in which they have taken a stand that for providing pensionary benefits due to the employee's family, nominee is mandatory, which is not in the case of the petitioner. The husband of the petitioner did not mention any person, as his nominee, as required under the Rules and consequently, the petitioner is not entitled for

payment of dues due to the employee. Further, the petitioner has not submitted the succession certificate as desired by the Department.

Contention of the petitioner is that the petitioner cannot get succession certificate before 7 years, as provided under Section 107/108 of the Indian Evidence Act, 1972. The petitioner who has two sons and one daughter with no means of livelihood is facing hardship. To remove the hardship, Rule 54 Sub Rule 11 of the C.C.S. (Pension) Rules. 1972 provides for making payment of dues to the family.

The petitioner has drawn my attention that the Commissioner of Custom, Gomti Nagar, Lucknow directed the Assistant Commissioner, Bareilly on 08.10.2003 to find out the veracities of the claim of the petitioner as to whether she is legally wedded wife of missing employee Sri R.C. Pandey? The Assistant Commissioner, Custom was also directed to collect collateral evidence like the extract of the *KUTUMB* register, ration card, voter list and domicile certificate issued by the competent authority to settle the claim of the petitioner. The aforesaid letter is annexed-11 to the writ petition.

Contention of the petitioner is that the Assistant Commissioner has already submitted the report before the Commissioner after collecting all these evidences. However, the claim of the petitioner has not been settled so far and instead of settling the claim, the respondent has asked the petitioner to submit succession certificate vide letter dated 23rd January 2004, which cannot be submitted before 7 years, in view of Section 107/108 of the Indian Evidence Act.

The petitioner has filed the supplementary affidavit, alongwith this affidavit, the petitioner has filed a receipt of premium paid to the L.I.C. , which is annexure-1 to the supplementary affidavit. In the said policy of Sri Ramesh Chandra Pandey, the nominee is the petitioner. The petitioner has also filed a certificate of permanent residence (Sthayee

Niwas Pramanpatra). This certificate also shows that Smt. Pushpa Pandey, the petitioner is the wife of Sri Ramesh Chandra Pandey. The petitioner has also filed an extract of *KUTUMB* register this document also proves that the petitioner is the wife of Sri R.C. Pandey. A receipt of electric connection has been filed which proves that the petitioner is the wedded wife of Sri R.C. Pandey. The petitioner has also filed, alongwith the supplementary affidavit, a certificate issued by Central Board of Secondary Education, of children in which the name of the petitioner is mentioned as the mother and Sri R.C. Pandey as father. All these documents show that the petitioner is the legally wedded wife of the missing employee Sri R.C. Pandey.

Normally, unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family, in view of Section 108 of the Indian Evidence Act, but considering the hardship of the families, the C.C.S. Pension Rules provide that the benefits can be granted to the family in case the family has lodged the F.I.R. and a report has been obtained that the missing employee is not traceable and further that an indemnity bond has been obtained from the legal heirs or the nominee.

In this case, when the petitioner's husband was inducted in the services, he was unmarried and, as such, he did not mention his wife as his nominee. Not only this, the petitioner cannot obtain a succession certificate before 7 years after the death of her husband as provided under Indian Evidence Act. Naturally, she is facing hardship.

Considering all these facts, I find it just and proper to direct the respondent no.2 to settle the claim of the petitioner after obtaining indemnity bond from the petitioner as provided under the Rules.

Accordingly, the respondent no. 2/ Commissioner of Customs is directed to settle the claim of the petitioner after obtaining indemnity bond from the petitioner as provided under the Rules, within a period of three months from the date of production of aforesaid documents which have been mentioned in the body of the aforesaid judgment, by the petitioner to the respondent no. 2.

With these directions, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

December 2, 2004:
NCM: